

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
GALLATIN RIVER BASIN (41H)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Burcalow Family LLC; USA (Dept of  
Agriculture Forest Service)

**CASE 41H-0874-R-2022**

41H 55122-00

41H 114870-00

41H 114871-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

### **MASTER'S REPORT**

The claims in this case appeared in the Preliminary Decree for Basin 41H with Montana Department of Natural Resources and Conservation (DNRC) issue remarks. The claims received an amendment request from USA Dept. of Agriculture Forest Service. Co-Claimant Burcalow Family LLC originally objected to the Amendment. The Case was consolidated into Case 41H-0874-R-2022.

### **FINDINGS OF FACT**

1. On January 26, 2023, Parties submitted a Stipulation.
2. The Parties agreed to split claim 41H 55122-00 and USA agreed to withdraw its Amendment.
3. Based on the information submitted in the Stipulation, water right claim 41H 30159533 should be created from parent claim 41H 55122-00 as follows:
4. The elements for claim 41H 55122-00 that changed after the split are:  
OWNER: Burcalow Family LLC

#### **PLACE OF USE/POINT OF DIVERSION:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
4				32	7S	4E	GALLATIN
2			S2	28	7S	4E	GALLATIN

5. Claim 41H 55122-00 should have an information remark stating, "The point of diversion and place of use are located entirely on private land."
6. The elements of new claim 41H 30159533 are the exact same as parent claim 41H 55122-00 except the following elements:

OWNER: USA (Dept. of Agriculture Forest Service)

#### **PLACE OF USE/POINT OF DIVERSION:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				32	7S	4E	GALLATIN
2			S2	28	7S	4E	GALLATIN

## CONCLUSIONS OF LAW

1. The Montana Water Court has jurisdiction over all matters relating to the determination of existing water rights and may consider any matter within the Court's jurisdiction on its own motion, or on the motion of an interested party. Section 3-7-224, MCA.

2. Montana law allows claimants to amend their statements of claim, and objectors to amend their timely filed objections after the objection period in a basin has closed. Motions to amend a claim or objection are governed by Section 85-2-233(6), MCA:

(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend a statement of claim or a timely filed objection that may adversely affect other water rights must be published for 3 consecutive weeks in two newspapers of general circulation in the basin where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The cost of notice required pursuant to this subsection must be borne by the moving party.

3. The splitting of the above claim does not constitute an increase to any of the claims' elements. The split only serves to reflect, more accurately, the current proportional ownership of the claimed place of use and flow rate. As a result, the notice requirements found in Section 85-2-233(6), MCA do not apply.

4. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves an element of the prima facie proof is incorrect. This is the standard of proof for every assertion that a claim is incorrect including claimants objecting to their own claims. Rule 19, W.R.Adj.R.

5. The parties agree that these changes resolve all objections.

6. Claims 41H 114870-00 and 41H 114871-00 also appeared with issue remarks regarding flow rate, and DNRC modifications to ditch name. The remarks on these claims were intended to give notice to other water users of potential issues. No objections, notice of intent to appear, or counterobjections were filed. The issue remarks

served their purpose and will be removed.

### RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

New Post Decree Abstract of Water Right Claims 41H 30159533 shall be created. All updated Post Decree Abstracts of Water Right Claims are served with this Report to confirm the recommended changes have been made in the state's centralized water right record system.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service Via Electronic Mail:**

Romney S. Philpott  
DOJ-ENRD  
999 18<sup>th</sup> Street, South Terrace Suite 370  
Denver, CO 80202  
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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 55122-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BURCALOW FAMILY LLC  
PO BOX 277  
WAUNAKEE, WI 53597

**Priority Date:** MARCH 7, 1906

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		S2	28	7S	4E	GALLATIN

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			S2	28	7S	4E	GALLATIN

THE POINT OF DIVERSION AND PLACE OF USE ARE LOCATED ENTIRELY ON PRIVATE LAND.

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**Remarks:**

SPLIT CLAIM NO. 41H 30150533 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 114870-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BURCALOW LARRY REVOCABLE TRUST  
PO BOX 277  
WAUNAKEE, WI 53597

**Priority Date:** JUNE 1, 1904

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 336.60 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 5 - LOW

**Maximum Acres:** 11.00

**Source Name:** LEVINSKI CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWNE	33	6S	4E	GALLATIN

**Period of Diversion:** MARCH 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Period of Use:** MARCH 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	11.00		NWNE	33	6S	4E	GALLATIN
<b>Total:</b>	11.00						

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 114871-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** BURCALOW LARRY REVOCABLE TRUST  
PO BOX 277  
WAUNAKEE, WI 53597

**Priority Date:** JUNE 1, 1900

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Irrigation Type:** FLOOD

**Flow Rate:** 394.94 GPM

**Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Climatic Area:** 5 - LOW

**Maximum Acres:** 13.00

**Source Name:** DUDLEY CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENW	33	6S	4E	GALLATIN

**Period of Diversion:** MARCH 1 TO NOVEMBER 1

**Diversion Means:** HEADGATE

**Ditch Name:** BLANCHARD DITCH

**Period of Use:** MARCH 1 TO NOVEMBER 1

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	7.00		NWNE	33	6S	4E	GALLATIN
2	3.00		SESWSE	28	6S	4E	GALLATIN
3	3.00		SWSESE	28	6S	4E	GALLATIN

**Total:** 13.00

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 30159533 STATEMENT OF CLAIM

**Version:** 1 -- ORIGINAL RIGHT

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** MARCH 7, 1906

**Type of Historical Right:** USE

**Purpose (use):** STOCK

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

**Volume:** THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			32	7S	4E	GALLATIN

**Period of Diversion:** JUNE 1 TO OCTOBER 31

**Diversion Means:** LIVESTOCK DIRECT FROM SOURCE

**Period of Use:** JUNE 1 TO OCTOBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1				32	7S	4E	GALLATIN

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**Remarks:**

THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 41H 55122-00.